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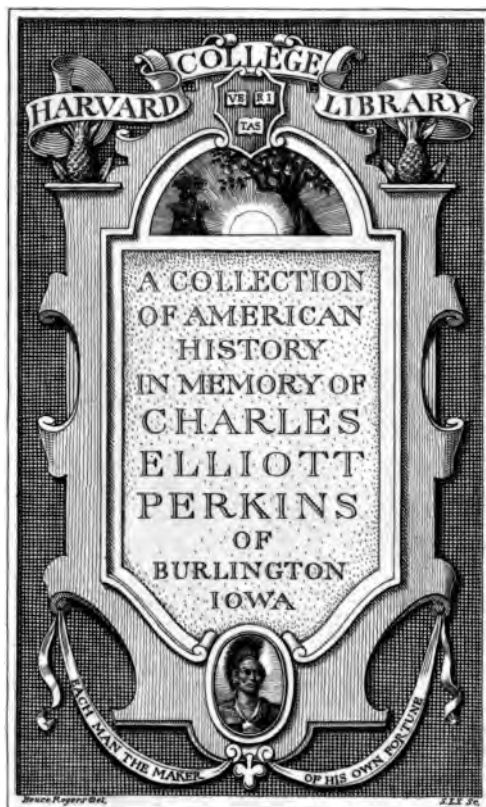
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SPEECH

YR

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JAN 20 1863  
U.S. SENATE

HON. LAZARUS W. POWELL,

OF KENTUCKY,

ON ARBITRARY ARRESTS,

IN REPLY TO MR. WRIGHT, OF INDIANA;

IN THE SENATE, JANUARY 19, 1863.

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## SPEECH.

The Senate having resumed the consideration of the bill (H. R. No. 362) to provide for the discharge of State prisoners and others, and to authorize the judges of the United States courts to take bail or recognizances to secure the trial of the same, and the pending question being on the motion of Mr. POWELL to strike out the third section of the bill—

Mr. POWELL said: Mr. President, when the resolution offered by the Senator from Delaware [Mr. SAULSBURY] was under consideration, I made a few remarks expressing my satisfaction at the recent Democratic victories in the northern States; not in the way of high-sounding eulogy, as several Senators have since indicated, but merely to express my gratification and to make my acknowledgments to the gallant men who won those victories, which, in my judgment, tend to sustain the Constitution of the country and the liberties of the people. For that, sir, I have been assailed on all hands, particularly by the two distinguished Senators from Indiana; and I now desire, very briefly, to reply to some of the remarks which have fallen from those gentlemen. I shall not notice particularly the Indiana election, and the matters of fraud alluded to by the distinguished Senator from that State, [Mr. LANE.] Those are matters about which, I confess, I am not accurately advised; but in the remarks which I shall make, I will briefly allude to the speech made by the other Senator from Indiana [Mr. WRIGHT] on that subject.

The Senator from Indiana, [Mr. WRIGHT,] in speaking on the subject of arbitrary arrests, invoked the name of Mr. Jefferson to sustain him and those who approve the action of the present Administration in the suspension of the *habeas corpus* and in making arbitrary arrests and placing the civil power in subordination to that of the military. I do not think, sir, that the name of Mr. Jefferson can be justly invoked in aid of such an unhallowed prostitution of the Constitution and of the liberties of the people. I will read what the Senator says on that subject:

"Mr. Jefferson sustained General Wilkinson for suspending the *habeas corpus* in New Orleans on the occasion of certain military arrests of persons who were suspected of complicity in Burr's expedition, thus justifying the setting up of military authority over the jurisdiction of the courts in times of public danger."

That is a charge that Mr. Jefferson sustained

General Wilkinson for suspending the *habeas corpus* in New Orleans; thus justifying the setting up of military authority over the jurisdiction of the courts in time of public danger. That, sir, if it be true, is a grave charge against the reputation of Mr. Jefferson. I hope to be able to show that no such charge can be justly laid to Mr. Jefferson. The whole life of that distinguished man was devoted to the maintenance of public liberty. He, perhaps, more than any other man that has lived in American history, devoted his time to that very issue. He was the warm, the devoted, and the ardent advocate of subordinating the military to the civil power. Sir, if you will refer to the Declaration of Independence, written by him, you will find that it is one of the charges against the British king that "he has affected to render the military independent of and superior to the civil power." He was arraigned, too, for "depriving us in many cases of the benefit of trial by jury," for "transporting us beyond the seas to be tried for pretended offenses."

These were charges made by Mr. Jefferson against the British king, among the just causes that he gives for taking up arms against that sovereign; and yet the Senator from Indiana would invoke the name of that illustrious chief of the Democracy to justify the arbitrary arrests of this day. Sir, the author of the Declaration of Independence, without stultifying himself, never could, at any period of his life, have advocated the subordinating of the civil to the military power.

But let us see what was done in the case of Swartwout and Bollman. It has often been said that Mr. Jefferson recommended the suspension of the *habeas corpus* during the time of the Burr conspiracy. Such is not the fact. Mr. Jefferson never, at any period of his life, as far as I have been able to learn, recommended the suspension of the writ of *habeas corpus* in any case whatever. On that point, I shall read two very short extracts from his correspondence, as given in a note to Mr. Justice Story's Commentaries on the Constitution, before I proceed to give a detailed history—a brief one, however—of his acting and doings touching Bollman and Swartwout, who were charged to have been engaged in the conspiracy of Burr:

"1. Mr. Jefferson expressed a decided objection against



the power to suspend the writ of *habeas corpus* in any case whatever, declaring himself in favor of 'the eternal and unremittent force of the *habeas corpus* law.' (2 Jefferson's Correspondence, 274, 291.) 'Why,' said he, on another occasion, 'suspend the writ of *habeas corpus* in insurrection and rebellion?' 'If the public safety requires that the Government should have a man imprisoned on less probable testimony in those than in other emergencies, let him be taken and tried, *retaken and retried*, while the necessity continues, only giving him redress against the Government for damages.' (2 Jefferson's Correspondence, 334.) Mr. Jefferson sent a message to Congress on the subject of the supposed conspiracy of Colonel Burr, on 22d January, 1807. On the next day, Mr. Giles, of the Senate, moved a committee to consider the expediency of suspending the writ of *habeas corpus* be appointed, and the motion prevailed. The committee (Mr. Giles, chairman) reported a bill for this purpose. The bill passed the Senate, and was rejected in the House of Representatives by a vote of 113 for the rejection, against 19 in its favor. (See 3 Senate Journal, 22d January, 1807, p. 127; *ibid*, 130, 131; 5 Journal of House of Representatives, 26th January, 1807, pp. 550, 551, 552.)

That is the recorded opinion of Mr. Jefferson; and upon what ground it can now be said that he ever was in favor of subordinating the military to the civil power, I am unable to comprehend. It certainly does not grow out of anything that occurred during the conspiracy of Burr. I have in my hand the message transmitted to Congress by Mr. Jefferson, on the 22d of January, 1807, touching the conspiracy of Burr; and in that message, after reciting the facts and stating that he transmits certain affidavits, he says:

"By these it will be seen that of three of the principal emissaries of Mr. Burr, whom the general had caused to be apprehended, one had been liberated by *habeas corpus*, and two others, being those particularly employed in the endeavor to corrupt the general and Army of the United States, have been embarked by him for ports in the Atlantic States, probably on the consideration that an impartial trial could not be expected during the present agitation of New Orleans, and that that city was not a safe place of confinement. As soon as these persons shall arrive, they will be delivered to the custody of the law, and left to such course of trial, both as to place and progress, as its functionaries may direct. The presence of the highest judicial authorities, to be assembled at this place within a few days, the means of pursuing a sounder course of proceedings here than elsewhere, and the aid of the executive means, should the judges have occasion to use them, render it equally desirable for the criminals as for the public that, being already removed from the place where they were first apprehended, the first regular arrest should take place here, and the course of proceedings receive here their proper direction."

That is the only clause in that message which alludes to *habeas corpus*. Mr. Jefferson does not even ask of Congress to suspend the writ of *habeas corpus*, but merely recites in the message the facts connected with that conspiracy, and he says one person had been released, and two others were en route to the capital that had been arrested by order of General Wilkinson. What was the course of Mr. Jefferson when those persons arrived here? That is a matter of public record. When they arrived here, Mr. Jefferson, on the 26th of January, 1807, sent this message to the Senate and House of Representatives:

To the Senate and House of Representatives of the United States:

I received from General Wilkinson, on the 23d instant, his affidavit charging Samuel Swartwout, Peter V. Ogden, and James Alexander with the crimes described in the affidavit, a copy of which is now communicated to both Houses of Congress.

It was announced to me at the same time, that Swartwout and Bollman, two of the persons apprehended by him, had arrived in this city, in custody each, of a military offi-

cer. I immediately delivered to the Attorney of the United States, in this District, the evidence received against them, with instructions to lay the same before the judges, and apply for their process to bring the accused to justice; and put into his hands orders to the officers having them in custody to deliver them to the marshal on his application.

THOMAS JEFFERSON.

January 26, 1807.

There, sir, is the message of Mr. Jefferson. That is the way in which he disposed of State prisoners; yet the Senator invokes the authority of Mr. Jefferson to sustain the arbitrary arrests and imprisonment of citizens of the United States by order of the present Administration.

Now, Mr. President, what is the difference? We find that the present Executive suspends the writ of *habeas corpus*. We find that, through the instrumentality of his provost marshals, an office unknown to the Constitution and laws of the country, he seizes persons in almost every section of the country; he drags them to distant prisons, takes them from the State and district where they are charged to have committed offenses, imprisons them for long months without a hearing, without even allowing the public or the prisoner to know what the charges against them are. Did Mr. Jefferson thus act? Has the President ever sent to this Congress the affidavits, the charges upon which any single individual has been arrested by his authority or by the military authority, and told Congress in a message, as Mr. Jefferson did, that he would hand them over to the civil authorities to be tried for the offenses they were charged to have committed? No, sir. So far from that, the friends of the President in this Senate and in the other House have voted down resolution after resolution demanding to know the charges against citizens who had been arrested and torn from their homes without charge being publicly made against them and imprisoned without warrant of law in your northern bastilles; and when such resolutions have been passed—there was one passed at the last session that I introduced touching certain arrests in Kentucky—the President has answered that it is incompatible with the public interest to give the information. Mr. Jefferson, unasked, sent to Congress the affidavit of General Wilkinson and others, on which the arrests were made, and told them that he had handed the papers to the law officers, and requested that Bollman and Swartwout be arraigned and tried for the offense with which they were charged. That was the conduct of Mr. Jefferson. How different the conduct of the present Executive! By an unconstitutional edict he closes the courts against the accused; he never has handed one over to the civil tribunals for trial, but, after long months of cruel imprisonment, many have been discharged without trial or any charges having been made against them. With the facts recorded as I have stated, how dare the Senator to assert that Mr. Jefferson desired, in certain times, the military to be above the civil power? His whole life, his conduct in this case of Swartwout and Bollman, shows unmistakably that the honorable Senator is grossly mistaken.

I am aware, sir, of the letter from which the honorable Senator read an extract, in which Mr. Jefferson said to General Wilkinson that the ar-

rest and bringing to this place of two of those gentlemen, and perhaps the addition of Burr and a few others, would be sustained by public sentiment. But, sir, did the Senator mean to intimate that when those persons were brought here Mr. Jefferson would have them locked up in a prison without trial, without a hearing? No, sir, the very converse was the action of Mr. Jefferson; and the authority adduced by the Senator is directly against him, and it comes, too, with crushing power upon the present Administration if their object or intention is to follow the lead of Mr. Jefferson in this matter.

But, sir, what were the facts connected with that case? I have before me the fourth volume of Cranch's Reports, in which the case *ex parte Bollman* and *ex parte Swartwout* is fully reported. I will read the first clause of that report, going to show what was done with those persons:

"This case came before the court on an application, by motion, for a *habeas corpus*, to the marshal of the District of Columbia, to bring up the bodies of Samuel Swartwout and of Erick Bollman, both of whom had been committed by the circuit court of that District, on a charge of treason against the United States; and for a *certiorari* to bring up the record of the commitment," &c.

That is a recital of the facts of the case. Swartwout and Bollman had, at the instance of Mr. Jefferson, been taken before the circuit court of the United States in this District, and they were committed for further trial. Application was made to the Supreme Court of the United States, then in session, for a writ of *habeas corpus* to investigate the case, and decide whether they were lawfully or unlawfully imprisoned. They were brought before the Supreme Court of the United States, and, after a most elaborate argument, an exhaustive decision was delivered by Chief Justice Marshall discharging them. And yet the Senator adduces Mr. Jefferson as authority to sustain the usurpations of the present Administration. Sir, does President Lincoln allow the writ of *habeas corpus* to be executed? No, sir; it has been refused over and over again. In the first instance, the execution of a writ issued by the Chief Justice of the United States was refused; and since then the execution of writs issued by the judges in various States of the Union has been refused, and it is now refused. Hundreds of the citizens of the United States have languished in prison for months upon months, protesting their innocence, demanding to know the charges against them, and the President has refused to allow the courts to investigate the cases; and he holds some of them, perhaps, to this day, pining in filthy dungeons. And yet Mr. Jefferson's name is to be invoked as justifying such conduct. Sir, the whole history of that illustrious man proves that he was unalterably opposed to all such usurpations of power. All he ever did justify was the seizing and bringing to this place of those two persons. He does, incidentally, justify General Wilkinson in that; but he never did, as far as I am advised, justify the suspension of the writ of *habeas corpus*. I was obliged to the Senator for invoking the name of Mr. Jefferson, in order that I might have the opportunity of vindicating his name from this charge, and setting the matter right in public opinion.

I have frequently heard it stated that Mr. Jefferson advised the suspension of the writ of *habeas corpus*, but such is not the fact. Read his message. He does not ask that it be suspended. He merely gives the facts in his possession; and, thereupon, the Senate of the United States did pass a bill suspending the writ of *habeas corpus* for three months. That bill went to the House of Representatives, and there the son-in-law of Mr. Jefferson moved to reject the bill, and on his motion it was rejected. These are the facts. This is the history as it stands recorded in the annals. In no event can the authority of Mr. Jefferson be invoked for these arbitrary arrests, and for the confinement of persons in these bastiles for long months, without a hearing, without a trial. There were two persons brought to him, and he instantly handed them over to the courts to be tried. The writ of *habeas corpus* was sued out, and the prisoners were brought before the court, and discharged from imprisonment. Can the Senator point to any such action as that on the part of President Lincoln?

But enough, Mr. President, on that point. The Senator from Indiana undertook to shelter himself by quoting Judge Douglas. I well know the conduct of Judge Douglas touching all these matters. I know that, although that illustrious man announced that war would be disunion, eternal disunion, he was in favor of its vigorous prosecution after the inauguration of the war; but there are some other things that Senator Douglas said about that time, with which, if the Senator will allow me, I propose to refresh his memory. Mr. Douglas, on the 27th of April, 1861, a short time prior to his death, and after the war had commenced, delivered a speech before the Legislature of his own State, in which he used this language, to which I invite the attention of the Senator from Indiana:

"I think I can appeal to friend and foe—I use it in a political sense, and I trust I use the word foe in a *real* sense—I can appeal to them with confidence that I have never pandered to the prejudice or passion of any section against the minority section of this Union, and will say to you now, with all frankness and in all sincerity, that I will never sanction nor acquiesce in any warfare whatever upon the constitutional rights or domestic institutions of the people of the southern States. On the contrary, if there was an attempt to invade those rights, to stir up servile insurrections among their people, I would rush to their rescue, and interpose with whatever of strength I might possess to defend them from such a calamity."

That was the utterance of Judge Douglas in one of the last speeches that distinguished patriot ever made. How is it with his follower from Indiana? We find that the President has done these very things which Judge Douglas condemned; and in that speech he declared that if they were done, he would defend the South with all the strength he had. We find that the President has attempted to overthrow the institutions of the people of the South; we find by his proclamation that he is endeavoring to incite rebellion and insurrection among the slaves; and yet the Senator follows the President in opposition to the sound, healthy, humane, constitutional teachings of his chief, Mr. Douglas.

I had hoped that the honorable Senator would have followed the teachings of Mr. Douglas. Sir,

with that declaration in his mouth, could Mr. Douglas, if he were here, approve, as the Senator does, of the emancipation proclamation of the President? Could Mr. Douglas ever have voted, as the Senator has voted, to arm slaves? No, sir; no. His proud heart would have rejected with contempt any such proposition. The Senator pretends to be the follower of Mr. Douglas; he quotes his language; and yet here is a recorded speech of that gallant chieftain, one of the last he ever made, and made after the war commenced, in which he says he would throw his whole force in favor of the South if such things were attempted. They are now attempted; they are now being carried out; and the follower of Mr. Douglas is shouting huzza! huzza! to the chief who destroys the Constitution of the country and overthrows the institutions of sovereign States. Sir, the Senator is again unfortunate in his authority when he adduces Mr. Douglas.

Again: the Senator, in the speech to which I am referring, seems to object greatly to party organization, and he makes a fling at fourteen gentlemen of the free States who had the audacity to issue an address to the people of the United States advocating the reorganization of the Democratic party. The Senator says:

"Twelve months ago, fourteen men, in the name of Democracy, less than one fourth of the Democrats in both Houses of Congress, issued their call for the organization of a party in this hour of our trial; and to this may be traced the cause of the present division in the North, the bitter partisan controversies, the indulgence of private feelings, opposition to the draft, the discouragement of enlistments, the arraying of party against party; these are the legitimate fruits of such organizations at such a time."

Sir, I approve most highly of the conduct of those fourteen gentlemen. I believe they did right in issuing that address. They stood in this Capitol and they saw that the Constitution and the liberties of the people were about to be overthrown; they saw that the Constitution of their country was violated in almost every vital part by those in authority. They, as faithful sentinels on the watch-tower of liberty, sounded the alarm to the people. They called attention to the facts; they asked the members of that proud and noble party, the Democratic party, to rally to the rescue; and notwithstanding their numbers were few, the result of that call has been wonderful indeed. It has resulted, as the Senator says, in the overthrow of the Republican party in Indiana, in Illinois, in Ohio, in New Jersey, in New York, and in Pennsylvania; and these glorious victories, I trust and believe, will roll on until State after State shall rally under that proud old banner.

So far from the Senator censuring, as he does, those gentlemen, in my judgment he should applaud them for their noble and gallant conduct in sending forth that address to the people whose liberties were imperiled. The Senator makes no assault upon the address, but yet he seems to condemn it. What is there in that address to which the Senator objects? He has made no direct assault upon any part of it. That address, in my judgment, contains many great truths which will exist as long as civil liberty is appreciated. So far from these gentlemen being condemned, I think that all lovers of constitutional liberty should ap-

prove their conduct, for in that address they called upon the liberty-loving men throughout the whole land to rescue the Constitution of the country from those who were trampling it under foot. The people have nobly, proudly, sublimely responded to that call, as is evidenced by the victories they have achieved. Every thrust and every assault made upon those gentlemen for that address will elevate them more and more in the esteem of the people.

The Senator asked if loyalty to the Government is reconcilable with hostility to the minister who administers the Government. I will read the whole of that sentence:

"Men boast their loyalty to the Constitution and laws, but deny that they owe allegiance to any man. Granted that allegiance is due to the Government under which we live, but is there nothing due to the agent who is the representative of the unity, power, and strength of the Government? Is loyalty to the Government reconcilable with hostility to the minister who administers the Government?"

The Senator virtually answers the question.

When you take into consideration the whole text you will find that the Senator clearly indicates that hostility to the minister is not reconcilable with loyalty to the Government. That is the plain English of the honorable Senator's assertion. I differ from the honorable Senator upon that point. The world, ever since struggles have been going on between the executive power on the one hand, and the constitution and civil rights and liberty of the people on the other, has differed from the Senator. History is full of illustrations and examples of this kind. I suppose that the honorable Senator thinks that the iron Barons, when at Runnymede they exacted the great charter from the pusillanimous John, were not loyal to their Government because they were hostile to the prince that ruled; but, sir, the world has attested otherwise. They were hostile to King John. They struck boldly, they struck successfully, for the liberties of the people. Their object was to rescue the liberties of the British people from the hand of that usurping tyrant, and they did it; and the whole world from that day to this has been filled with their praise, except when they have been assaulted by despots and tyrants and their minions. There was a party arrayed against the executive power, and they manfully stood their ground until they rescued the ancient liberties of the English people by the exaction of the Great Charter from that tyrant king; and if the Senator had lived in that day, entertaining the sentiments he now does, he would of course have opposed the Barons and adhered to the party of King John. That is not the only illustrious example in the history of our ancestors. In 1628 Parliament demanded the Petition of Right from another of the British kings, who was exercising and claiming power to which he was not entitled, under the constitution and laws of the British empire. They fearlessly and boldly demanded the Petition of Right as a further security of the liberty of the people. They got it. And further: in 1688 there was another struggle that resulted in driving an English king from the throne, the second James; and they demanded, before they allowed his successors, William and Mary, to mount the throne, a Bill of Rights. These were struggles against those in power. Were

those men disloyal to their country because of the hostility shown to the executive, to the minister? The Senator, no doubt, would pronounce them disloyal. The world has pronounced them hostile to the prince, but loyal to the constitution and laws of their country, and defenders of the rights and liberty of the people.

The instances that I have given are cases where the people, or the representatives of the people, united against usurpers, against the executive power. Each time glorious results followed in favor of constitutional and civil liberty. The world is full of illustrious personal examples. I suppose the Senator would differ from the whole world in the eulogy it has passed upon John Hampden, upon Algernon Sidney, and Russell, bold and daring friends of civil liberty who, in their day and time, struck against executive power. Sir, they were hostile to the minister; they were hostile to the king because he usurped the powers that belonged to the people and Parliament. He carried his prerogative beyond its legitimate sphere; he cast down and put under foot the constitutional liberties of the people. The illustrious men whom I have named resisted the tyrant; and the world, from that day to this, has proclaimed them honored martyrs to the cause of constitutional liberty. They died resisting the minister; they died in favor of the constitution of their country; yet the Senator thinks loyalty is irreconcilable with opposition to the minister. I disagree with the Senator. All history condemns his sentiments. The purest and the loftiest patriots that have ever lived are those who have manfully resisted the encroachments of executive power on the liberties of the citizen. History has so pronounced them, and liberty-loving men throughout all time will honor their memories.

We who, in our humble way, at this day oppose the usurpations of the present Executive, are arraigned for want of loyalty, forsooth, because hostility to the minister is not reconcilable with loyalty to the Government. The Senator curiously confounds the Government with the President. We all owe allegiance to our Government, but we owe none to the minister, unless he administers that Government which is intrusted to him in accordance with the Constitution and laws of his country. When he violates those, in order to be loyal to the great principles of constitutional liberty we must resist the encroachments of the minister, or the rights and liberties of the people will be overthrown. That is our duty to-day. That liberty-loving men in all past time have done, and will do in the future. It is only the tools of despots that will do otherwise.

I grant you that loyalty is due to the Government; allegiance is due to the Government, but not to the minister. The Government, Mr. President, was instituted to protect and secure the people in their lives, their liberty, and their property, and whenever it fails to do that, the Government is no longer desirable. Our Constitution was formed for that purpose. Indeed, the Constitution is the written exposition of the will of the people. But the gentleman seems to speak of the President as the Government. The President is no more the Government than the legisla-

tive department. He is no more the Government than is the Supreme Court of the United States. The President is the creature of the Constitution; he can exercise no power but what is delegated in that instrument; and the very moment he goes beyond those delegated powers, he is a usurper. Talk about the President being the Government! He is the agent, the instrument of the people for the purpose of executing the powers conferred upon the Chief Magistrate by the Constitution, just as we and the other House are the agents of the people for conducting the legislative department; just as the Supreme Court of the United States is the agent for administering the laws. The President is no more the Government than the judicial or the legislative department. He has no power except what he derives from the Constitution. He is the creature of it. I owe the President no more allegiance than he owes me. He should be as loyal to the legislative or the judicial department, as either of those departments, or any members of them, should be to him. In this evil day, I hear constantly the President spoken of as being the Government. Those who entertain these doctrines seem to me to be willing to lay down freedom, and to accept despotism. I have not been brought up in that school of politicians. I never, never will yield to any such dogma. When the President administers the functions of his office according to the Constitution of his country, and in a manner that I think is right, I will applaud him. When he goes beyond that, and violates the fundamental law, I will condemn him. Away, then, with the doctrine that the President is the Government. I am astonished that the Senator should use such language.

Mr. WRIGHT. If the Senator will permit me, as I want to answer him, I will give him now the full benefit of my views on that point. I lay down this doctrine: under the law of this country, whenever Congress declares war, and war exists, it is the duty of all loyal men to sustain, by appropriations of money, the Army that is trying to save the country in its existence. That is my doctrine of loyalty.

Mr. POWELL. Do I understand you to say that Congress has declared war?

Mr. WRIGHT. War is declared. It is the law of the land. It is the duty of all loyal men to sustain the Government and carry on the war by taxes, by money, and in every other way—

Mr. POWELL. Mr. President, I by no means concur with the Senator in that. That would depend altogether on the kind of war. If I thought the war was one to overthrow the Constitution of my country and the liberties of the people, I would give neither men nor money to carry it on. I believe the war in which we are engaged is one of that character; consequently I have given neither men nor money to carry it on, and so help me God I never will. I believed from the beginning that this war was brought on for the purpose of overthrowing the institutions of the southern States, to get rid of the institution of African slavery, and, if you could not do it by war, then to dissolve the Union. That has been my opinion from the beginning; and when there was a resolution introduced here by Mr. Johnson, similar to the

one offered by Mr. CRITTENDEN, I voted against it; and I said in my place that I did not believe that it contained the truth; and the facts developed from that day to this have confirmed me, and shown that I was right in the opinion that I then formed. I love the Constitution of my country. I am devoted to the Union of the States. I believed that this war would forever tear the Union asunder, and bring on this people untold evils, onerous taxes, heavy debt, and do no good. I believed we could never hold this people together by arms. Hence I opposed the war; and, believing that, I will support no war which, in my judgment, will be attended with such disastrous results. The gentleman can advocate a war that his conscience tells him is wrong; that he thinks will overthrow his country, destroy its liberties, destroy its Constitution, rend it asunder forever, and bring ruin, misery, and want upon the States and the people, if he chooses; but I will never do it. I will act as an independent Senator; and I am opposed to a war which leads to such consequences. I hope that the Senator is now satisfied as to my exact position.

I hear a great deal said here about the life of the nation. Senators seem to think that the Administration of Abraham Lincoln, the present Executive, is the life of the nation. What, sir, is the life of the nation? Is it its area? Is it the number of square miles? I thought the life of the nation was the Constitution, and the laws made in pursuance thereof. I thought the life of the nation consisted in liberty regulated by law. That was my opinion of the life of the nation. The gentleman seems to think that territorial extent is the life of the nation. Was not this nation as much of a living element when we had but thirteen States? I desire that the territorial integrity of the Union may be maintained; but that is not the life of the nation: its life is the Constitution and laws. They are being murdered, in my judgment, by the present Executive. I believe the Constitution is being overthrown; indeed, I know it; Senators know it. They will not defend the President for it except on the ground of necessity. I believe that the constitutional rights of the citizen have been cloven down. In this, sir, the life of the nation is being fast taken away. Senators approve that. I do not. I want the nation to live. I want it to live in its glorious Constitution, in its laws; and extend protection to the life, liberty, and property of its citizens.

But the present Administration is overthrowing the Constitution of the country and the laws made in pursuance thereof, not only of the Federal Government, but even the constitutions and laws of the States, in defiance of the courts, have been suspended and stricken down. But Senators say the President had a right to suspend the writ of *habeas corpus*, and therefore he could do all these things. Mr. President, I am not going to discuss again the power of the President to suspend the writ of *habeas corpus*. It is well known to the Senate that I regard that as a legislative, not an executive power; but there is one question which gentlemen seem to forget when they speak on that point. Suppose the writ of *habeas corpus* is legitimately suspended, can the President of the United States or any of

his Cabinet ministers lawfully make an arrest? That is a question which I propounded to the honorable Senator from Vermont, [Mr. COLLAMER,] but I could get no answer to it. I propounded it to all the Senators on the other side, and I could get no answer. Even if the writ of *habeas corpus* be suspended legitimately, can the President suspend the courts in the various States of this Union, which he has done virtually, for through his instrumentality the judges are not allowed to perform the functions of their office in many cases?

But, Mr. President, one word as to the Indiana election. It strikes me that if I had not chosen to say a few words in commendation of my brother Democrats in the North I should not have been assailed in the various modes in which I have been; but, as the Democracy of Indiana have no representative on this floor, and as I am their neighbor, and as I brought down the terrible thrusts of the two distinguished Senators from Indiana on them, I deem it my duty to defend them, and I will do it to the utmost of my power and ability, because I believe they are right; I believe they are bold champions of constitutional and civil liberty. I approved their course; and I can tell the gentlemen that, notwithstanding all of his popularity, all of his eloquence, backed up by the Republican party, these gallant knights have overthrown Republicanism and Abolitionism, and they are this day triumphant. I do not claim to be so well posted on the facts as to these elections as the Senators. They are local matters; but there are some things of public notoriety about them that I, in common with other men, do know. I will read an extract from the honorable Senator's speech on that subject. I do not claim to be accurately and minutely informed as to the acts and doings of political parties in that State; but there are certain facts that are matters of public record, that are accessible to me, as they are to every other gentleman in the country, and I wish to apply the Senator's statement to that touchstone, to that record evidence, which I will do, and see how far he has darkened my vision. I will read this extract from the Senator's speech:

"The Senator from Kentucky has spoken of other manifestations of loyalty in the late elections; and he spoke with an air of triumph of the 'gallant Democracy' of my own State, and of others. I may darken the bright vision of the honorable Senator; but the cause of truth inflexibly requires that I should tell him how much he is mistaken. Instead of the election in Indiana being evidence of opposition to the Government, the gentlemen who sustained the Administration by voting for the tax law and other great measures of the Administration have been reflected by large and increased majorities; while the votes of those were reduced who voted against the tax law—in one instance, at least."

There is a distinct avowal of the honorable Senator that those members who voted for the tax law and other measures of the Administration were elected by increased majorities, while the majorities of those who voted against the tax law were decreased, in one instance, at least. With that statement of fact, which the Senator says truth compels him to make, he thinks he will darken my vision. Now, sir, in order that truth may be vindicated, I will give a few scraps from the history of the Indiana election to show that the Senator is mistaken—I say mistaken; of course I will

not insinuate that he would willfully misrepresent.

There are in Congress from Indiana five Republicans who voted for the tax law, for the confiscation bill, and the other leading measures of the present Administration; and I will show to the Senate how they fared in that election. He says they were all reelected by increased majorities. Mr. JULIAN is a member of the present Congress, who voted for all these extreme measures. He has been elected to the next Congress; but his majority is decreased 2,878 compared with what it was before. Mr. COLFAX has been reelected to the next Congress, not by an increased majority, for his majority has been reduced 3,173. They are the only two Republicans reelected to the next Congress who voted for those measures, and their majorities have decreased 6,051 votes. The Senator says they were all reelected. Mr. DUNN, Mr. MITCHELL, and Mr. SHANKS, of the House of Representatives, voted for the measures I have indicated; but, instead of being reelected, they were defeated. Those three gentlemen were elected in 1860 by majorities amounting together to 6,901. Last fall they were defeated by Harrington, Edgerton, and McDowell, Democrats, by majorities amounting in the aggregate to 2,739. These are facts that I take from the record. The Senator says all the members who sustained the measures of the Administration were reelected. Sir, I suppose the political ghosts, the shadows of DUNN and MITCHELL and SHANKS were filled with surprise at the Senator's statement; but he was mistaken. So far from their having been reelected, they are among the politicians that are defunct. The lion-hearted Democracy in the persons of the gallant Harrington, Edgerton, and McDowell, have rolled the car of Democratic progress over them, and they exist as Congressmen no more after the 4th of March; but their places will be filled by true Democrats. I am surprised that my worthy friend could have been so much mistaken about matters in his own State. I know it is an honest mistake, but it is a most egregious one.

Where, sir, in that State did the battle wage the fiercest? Mr. VOORHEES, who represented the seventh congressional district of Indiana, was elected in 1860 by a majority of 1,014; he was reelected in 1862 by 2,481, an increased majority of over fourteen hundred. It is well known that that gallant and eloquent champion of the Democracy voted against all these extreme measures at the last session of this Congress. It is known that he more fiercely than any other man in that House, perhaps, denounced the Administration for its profligacies, its corruptions, and its venalities. It is well known throughout the whole valley of the Mississippi that all the power and force of the Republicans were directed against that eloquent and noble young champion of the constitutional liberties of the people. It was the seventh congressional district against which the Republicans of Indiana, more than any other district, aimed their blows; there the battle waged fiercest, and what was the result? He was gloriously and triumphantly elected by an increased majority of over fourteen hundred votes, and no man can say that the fight did not rage fiercer in the seventh

district than any other. Mr. VOORHEES was a bright and a burning light in the camp of the Democracy. He was their favorite, and all the hordes of Republicanism tried to beat down that noble and eloquent young champion, but they failed. The gallant and noble-hearted Democracy of that district took him in their arms and bore him aloft, and placed him again in Congress over the heads of all of his assailants and adversaries. No man was ever hunted more fiercely in a political contest.

But, sir, in the latter part of the statement of the Senator he says that in at least one instance those who voted against the tax law were returned by reduced majorities. There was Judge LAW, an honest and pure patriot and an able statesman, in the first congressional district; his majority fell off 365 votes; he was elected, however, by a majority of 2,384. It fell off only 365, and put him and VOORHEES together, and the two increased their majority over a thousand votes; but, sir, the majority of Judge LAW, as I am informed by the people in that district—for I live upon its very border—was reduced because the Democrats from that district were in the war. That is the declaration, but the decrease was very insignificant. He is a true and noble-hearted old patriot, and he voted against all these extreme measures.

Now, sir, the gentleman may try to get hope from the fact that, in the second congressional district, Mr. CRAVENS voted in favor of the tax law. Mr. CRAVENS is the distinguished Representative of the second district. He was elected in 1860 by a majority of 540; in 1862, he was reelected by a majority of 4,700, an increased majority of 4,160.

It is true, so far as the tax law is concerned, that Mr. CRAVENS voted for it; but it is also true that Mr. CRAVENS voted against the negro measures of the President. He voted against the confiscation bill; he voted against arming negroes; he voted against the negro policy throughout; and he adhered to the organization of the Democratic party. If he was wrong in voting for the tax law—and, as to that act, I will not blame or praise it—many were his virtues in opposing all the radical doctrines of the abolitionists, who proposed to overthrow the institution of slavery, to arm the slaves, and to pass an unconstitutional confiscation bill. The gallant people of his district forgave him for that error, if error it was. I do not say it was an error, though I voted against the tax law myself. They triumphantly returned him by 4,700 majority. He did not do as the Senator did—leave the Democratic organization—and he now stands in his seat in the House of Representatives; and I read, the other day, a noble speech of his, made in that House, in which he boldly arraigned the President for his negro policy. He stands shoulder to shoulder with the constitutional Democracy on these questions.

In another district, Mr. HOLMAN was reelected. On reference to the Journals, I find that Mr. HOLMAN did not vote at all upon the tax law. I have heard it said that he has stated that, if he were present, he would have voted for it; but Mr. HOLMAN, also, was against the Administration upon all these extreme measures. He was against all their emancipation negro policy; he was against

their confiscation bill, as I am advised; and he was reelected by a majority of 2,934; whereas he was elected, in 1860, by a majority of only 292. His majority, therefore, was increased 2,742.

Then, when the matter is summed up, it seems that of those who advocated the confiscation bill and the emancipation negro policy of the President, not one was reelected by an increased majority. Two of them were reelected, but by very much diminished majorities. The two who voted against the tax law and all radical measures of the Administration are members of the next Congress. Two more, one who voted for the tax law and another who did not, but avowed that he would perhaps have voted for it if he were present, and who voted against the confiscation and emancipation policy, were reelected by increased majorities. How the Senator can reconcile these facts with the statement he made in his speech about the Indiana election, I leave it for him to decide. He is certainly more mistaken than a gentleman ever was about an election in his State, for I do not conceive how a gentleman could be more profoundly in error than the Senator has exhibited himself in that statement.

Mr. President, the Senator speaks a good deal about Democracy. He quotes in his speech a certain resolution passed in Indiana, and then proceeds to say:

"Such are the appeals made to the people in the name of Democracy. 'O! Liberty, what atrocities are committed in thy name!' was the uttered sentiment of Madame Roland. O! Democracy, how art thou abused by thy lip-worshippers! If Democracy requires that I shall assist in sowing dissensions among sections, stimulate the local prejudices of one State against another, and thus foment intestine strife where there should be undisturbed harmony, I shall cease to be a Democrat."

Does not the honorable Senator know that his course in Congress makes him liable to this very charge? What more could he do to sow strife between the sections of the country, than to advocate the emancipation proclamation of the President, the confiscation bill, and the arming of slaves? The conduct of the Senator could not have been shaped better to effect the very object of which he complains. He says that all this is done in the name of Democracy. With great deference to the honorable Senator, I will not say what name he wears politically; but there is one thing I do know, the acts to which I have alluded were not done in the name of Democracy. The gentleman is not acting with the Democracy; he is acting with the opponents of the Democracy; he was acting with the Republicans and the extreme abolitionists when he did these things. I hope the Democracy will never be charged with the votes of the Senator. He was without the organization in his own State; was in battle array against it, traversing his State from one end to the other, making political speeches against the organization of the Democracy in Indiana. They regarded him as out of their organization; and in addition to having to beat the Republicans and the abolitionists united, they had to overcome the great popularity and potent influence of the Senator himself, thrown into the scale with the abolitionists. That is what made the triumph more signal. They not only triumphed over their ancient enemies,

but one of their most popular and famous leaders had deserted their standard; in a word, he had left the household of the faithful and had joined the tents of the wicked, and was doing battle against his old friends; and yet they conquered them all. I hope the action of the honorable Senator may never be quoted as the doings of a Democrat. I know how the Democracy of Indiana regard him, as outside of the organization.

But, sir, the Democracy have been a party that have ever stood firm to the Constitution of their country. They have resisted encroachments upon it from the days of Jefferson to this hour. It is a party of law and order. They know that we can have liberty only by observing the Constitution and faithfully executing it. They believe in liberty protected by law. That has been the creed of that time-honored party in the service of which the Senator has devoted his life until this unhappy civil war; and after the Senator went out of that organization, we find him voting for confiscation bills, and for measures to arm the slaves.

The Senator advocates the suspension of the writ of *habeas corpus* by the Executive; he is in favor of the negro emancipation proclamation of the President. This speech, if gentlemen will read it, will show that he approves it fully, not in so many words, but the inference is so clear there can be no doubt about it. He goes in for the martial-law proclamation, and he tells us that he wants to see one hundred thousand slaveholders running one way and a million negroes another way. Where does he want the one hundred thousand slaveholders to go? Into the Gulf? Where does he want the million negroes to go? Does he want them to go to the State of Indiana, or the free North? It is clear from that declaration of the Senator that he does not wish the Union restored as it was, with the Constitution as it is, because the slave owners and slaves were then together. The Senator wants them apart, the masters to go one way and the negroes the other.

The Senator favors this proclamation of the President, and he says he has supported, and will support, the President in all his great measures. The President has been dodging about a good deal, as much so as a cunning fox, when hotly pursued by a pack of hounds. We find the President, in his inaugural address, declaring that under the Constitution he has no power, and he says he has no inclination, to interfere with the institution of slavery in the States. We find him, after the war had commenced, after the assault had been made on Fort Sumter, through the mouth of his Secretary of State, on the 22d of April, 1861, in a dispatch to Mr. Dayton, declaring that the President has no power under the Constitution to interfere with slavery in the States; and that, let the revolution result as it may, the status of this institution will remain the same. These are the recorded opinions of the President before and after the war. The Senator, I suppose, agreed in all those opinions, as the great measures of the Administration. We find him now approving of the emancipation proclamation, which is directly in contravention of the recorded opinions of the President in his inaugural address and his communications to our for-



eign ambassadors, through his accredited organ, the Secretary of State.

But, sir, although the Senator approves of all these things, the Democracy of the country cannot approve of them. They will stand by the Constitution of their country. They will assail all who attack that sacred instrument, no matter who they are, whether they are those who have never been in our organization, or those who have recently gone from it. We shall treat them as the enemies of the constitutional liberty of the country, and stand on its defense. Some gentlemen seem to be very much frightened at the recent successes of the Democratic party. I tell them now that we are going to stand on our posts; we are going to rescue the Constitution of the country from those who now assail it; we intend to drive the Goths and the Vandals from the capital; and in my judgment, after the next presidential election, we shall have possession of this Government, so far as the Executive and the other departments are concerned. I do not suppose that we shall get this Senate, but the other departments we shall have. We intend to maintain the constitutional rights of all the States, and in no event will we allow the fundamental law to be overthrown.

Gentlemen might just as well cease their assaults on the Democracy. We shall soon have the power to carry out our doctrines, and we intend to do it. We have won glorious victories already, in spite of your bastilles and the suppression of the freedom of the press. All those things have but increased our strength. We shall go on to conquer. It is our mission to restore the Constitution, and with the blessing of God we shall accomplish it.

But the honorable Senator makes another singular assertion which I will read. It is this:

"If the people of the rebellious States really desire to enjoy their rights under the Constitution, they have it in their power to do so at once, the door is open before them. They have but to accept of the invitation of the President, lay down their arms, and return to their allegiance to the Government, and they will find at once that the Constitution is the palladium of their rights and liberties."

Now, I ask the Senator in all candor, how can the Constitution, with all the rights those people had under it, be restored to them, should they return? The President has issued a proclamation declaring three millions of their slave property to be free. I look upon that proclamation as utterly unconstitutional and void; but the Senator thinks he had the power to issue it. If he had the power to issue it, then I ask the honorable Senator has the President the power, on the return of these people to the Union, to put the chains on their slaves as well as to strike them off? If those three millions are emancipated by his proclamation, can he declare them slaves again? I suppose none will advocate that doctrine; and yet, as a logical proposition, if he had the power to do the one he has the power to do the other. Sir, he has the power to do neither. Thus it will be seen that if the policy of the President and the Administration be carried out, it would be utterly impossible for these people to be restored to their rights as they were under the Constitution before their secession took place.

The honorable Senator, after talking about extermination and all that kind of thing, becomes exceedingly pious, and he makes a quotation from the Bible that I very heartily approve of. I will read it. If some of us who have not favored the present Administration had used it, I suppose it would have been taken as an indication that we were in favor of a dissolution of the Union:

"I have often thought that we should not suffer if we had more of the spirit of Abraham, who could say to Lot—

"Let there be no strife, I pray thee, between me and thee, and between my herdsmen and thy herdsmen; for we be brethren. Is not the whole land before thee? Separate thyself, I pray thee, from me. If thou wilt take the left hand, then I will go to the right; or if thou depart to the right hand, then I will go to the left."

That, sir, is truly a Christian spirit. I wanted no strife. I believed honestly that strife would result in separation, in heavy national debts, and the loss of thousands and hundreds of thousands of our young men, rendering the households of the people of the whole land full of lamentation and mourning, almost as much so as the households of Egypt when the edict went forth that the first-born of every house should be slain. I believed all these things would happen. They have, in a great measure, come to pass; and hence I was opposed to strife and bloodshed. One would imagine from the quotation I have just made that the Senator wanted them to go in peace, if we could not live together in amity and harmony. I confess I would rather see them go in peace than to see an effort to hold the Union together by force of arms, which will be utterly futile. While I desire all the States to remain together; if there is no other means of keeping them together than war, I believe that that can never accomplish it. If you could not hold them together by compromise and concession, which I believe could have been done—I have no doubt about that—you should have let them go, and instead of conducting this foolish war have made a close treaty of commerce and amity, given them constitutional guarantees, and, perhaps, they would have all been back before this time. I never had any faith in the idea of holding these States together by arms, and I never shall believe it until it is a demonstrated fact.

But let us see how the Christian teaching of the Senator corresponds with what he says in other parts of his speech. The Senator, speaking of the means of carrying on this war, says:

"Call it what you may, apply any appellation that your fancy may suggest—be it invasion, conquest, subjugation, abolitionism—if no other resource be left to preserve the life of the nation, the rebellion must be crushed by fire and the sword, by the flag and death and destruction."

That is the utterance of the Senator, and then a little while afterwards he gives the Christian words that I read a moment ago. How does the Senator reconcile the two? Again, I find the Senator using this language:

"This may be a war of extermination; but this country has to be saved, cost what it may. If the Army had cut off the railroads in the South when it had possession of them; if the fire and the sword and the flag, if necessary, had been used to take the means of the rebels out of their possession, you would have been nearer peace to-day than you are."

How does the Senator reconcile these ferocious sentiments with the quotation he gives us from the Bible about Abraham and Lot? I confess I can



see nothing of the spirit of Christianity about it. Is that the spirit that animated the early Christians? We have some historical incidents of the spirit of those times. Theodosius the Great, after he became emperor of the whole of the Roman empire, in the early age of Christianity, had many seditions to contend with. The large cities were seditious. One of the greatest of these seditions was that of Thessalonica. Theodosius sent his army to subdue them. They murdered some three or four thousand of those people. When Theodosius presented himself shortly afterward at the portals of the church, he was turned back and cut off from the communion, by Ambrose, Archbishop of Milan. Thus we find one of the Christian fathers rejecting and throwing out from the bosom of the Church, for the time being, the one under whose authority those cruel deeds were done.

The Senator from Indiana says he will make use of fire, the sword, and the fagot to put down the rebellion. Sir, it ill comports with the doctrine which he teaches us from the Bible. He says he would destroy all their substance. Does not the honorable Senator know that under the laws of nations, as laid down by all writers in this Christian age; by our own Kent, as well as by Vattel, and all the law writers on the subject, that private property is not to be taken by an enemy, except upon full equivalent? That is the doctrine laid down by all modern international law writers of our own country, as well as others; and yet the Senator, in his ferocious zeal to destroy those people, would visit them with the fagot and the sword. He would destroy the whole of their substance, and, necessarily, would leave their women and children to starve to death.

Why, sir, the Senator seems to desire to carry on this war on the same principles that the Goths and Vandals and Huns did when they poured down upon the fair plains of Italy. The ferocity he advocates is almost equal to that of Attila the Hun, who was said to be "the terror of the world and the scourge of God." That celebrated chief boasted that no grass grew where his war-horse's hoofs marked the earth.

The Senator advocates the use of the fagot and the sword, death and destruction in the putting down of the rebellion, and at the same time throws into his speech the most Christian sentiments about Abraham and Lot parting in peace. It seems to me that is strikingly inconsistent. I hope my friend may be animated by those Christian feelings, and that he will dismiss this ferocious spirit in which he talks about the use of the fagot and the fire and the sword. Sir, I think it is unbecoming a Christian age and a Christian country. I know it is unbecoming the Christian character of the honorable Senator. I trust he used those expressions in hot haste, and that he has already repented of them. It is not in accordance with the sublime teachings of Christianity; it is not in accordance with the genius of the age; it is utterly shocking to every impulse of humanity. Make war upon those who have arms in their hands; but for God's sake do not go with fagot and fire and sword, and destroy all they have, and leave the poor women and children to

starve. Do it, sir, and you will be a byword and a reproach to all the nations of the earth. All Christendom will rise up in condemnation of such horrid barbarities. And yet that is the doctrine preached here by those who are in favor of this war. Had you carried on the war under and within the Constitution of the country, and maintained sacredly the constitutional rights of the people, in my judgment you would now be much nearer the close of this war than you are. Instead of doing that, you have managed to unite all the southern people, and by this kind of assaults upon the Constitution created divisions in the North.

Senators talk about divisions in the North. Sir, let me tell you why they are there. It is because those in power have not conducted the war within the Constitution. It is because those in power have violated the Constitution. It is because the great rights and liberties secured by that instrument to the people of this land have been stricken down. It is because those in power have violated it in almost every vital part. They have not adhered to it at all; and the people, finding that there was a revolution at home, perhaps more dangerous to them than that in the South, have taken up the cudgels for themselves. The people begin to see that the Union cannot be restored by arms; hence they are becoming disgusted with the war. What boots it to a free people whether they retain the territorial extent of their country or not, if their Constitution and liberties are cloven down and a military dictator sways his scepter over this once free land? Hence it is that the people, in order to save their own liberties, have risen up against this present Administration, and they will put it down, as they ought to do. That is no evidence at all that they are in sympathy with this rebellion. I know that gentlemen, when they come to defend this Administration, try to place it there. You cannot rest the argument there, sir. Because we choose to defend the people from the assaults made by the Executive against their constitutional liberty and their dearest rights of property, you cannot cry out that we sympathize with the rebellion. No, sir; those are the best friends of the Government who stand firmly and inflexibly by the constitutional rights of the people. Demagogues may say what they will, but this thing of crying "disloyalty" is a game that is played out. It can deceive nobody. We scorn it and treat it with contempt. You may shout disloyalty or what you will; but we will go on with this battle in favor of the constitutional rights of the people, and we will oppose all those who assail the Constitution of the country. Gentlemen may say, "You say nothing about the rebels." Why, sir, we are not speaking of them. We do not approve of what they have done; but we are resisting encroachments upon our rights here. That is the point at which we expect gentlemen to meet the argument.

Mr. President, I have said briefly, somewhat crudely, I know disjointedly, what I had intended to say in reply to the honorable Senator from Indiana. In the remarks that I have made I have referred to him with the greatest kindness, and with a great personal regard for him: but he was

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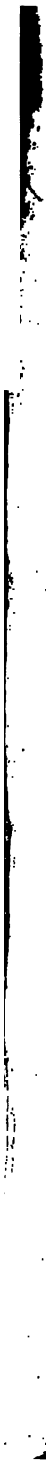
about to leave the Senate, and I did not desire the speech he had made to go out without some reply, particularly as more than half of it was devoted to myself. I thought that many of the Senator's positions were exceedingly wrong, and I have, in my humble way, tried to set them right. I thought the statements he made with regard to the Indiana election were not in accordance with

the facts, and I have attempted to show it. If I had time I should like to say a word in reply to a remark made by the honorable Senator from Rhode Island [Mr. ANTHONY] the other day; but I shall not do it now. I will reserve that for some other time. The honorable Senator from Indiana wishes to reply to me, and I will now give him that opportunity.

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